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No. 01-674

In the Supreme Court of the United States

PAMELA H. YANCO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the Bureau of Justice Assistance properly determined that the mental effects upon a police officer of a false accusation against him did not constitute a "personal injury" within the meaning of the Public Safety Officers' Benefits Act of 1976, 42 U.S.C. 3796.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-16a) is reported at 258 F.3d 1356. The opinion of the United States Court of Federal Claims (Pet. App. 17a-49a) is reported at 45 Fed. Cl. 782. The decision of the Bureau of Justice Assistance is unreported.

JURISDICTION

The judgment of the court of appeals was entered on July 24, 2001. The petition for a writ of certiorari was filed on October 22, 2001. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Public Safety Officers' Benefits Act of 1976 (the Act or PSOBA) provides for payment of a death

benefit to enumerated survivors of police officers and firefighters in cases in which the Bureau of Justice Assistance (the Bureau or BJA), a component within the Department of Justice, "determines, under regulations issued pursuant to [the Act], that [the public safety officer] has died as the direct and proximate result of a personal injury sustained in the line of duty." 42 U.S.C. 3796(a). Bureau regulations promulgated under the Act define a "personal injury" as "any traumatic injury." 28 C.F.R. 32.2(e). Traumatic injury, in turn, is defined by rule as

> a wound or a condition of the body caused by external force, including injuries inflicted by bullets, explosives, sharp instruments, blunt objects or other physical blows, chemicals, electricity, climatic conditions, infectious diseases, radiation, and bacteria, but excluding stress and strain.

28 C.F.R. 32.2(g).

In promulgating these regulations, the BJA's predecessor, the Law Enforcement Assistance Administration, relied upon identical passages in two House reports defining "personal injury" as including:

> all injuries to the body which are inflicted by an outside force, whether or not it is accompanied by physical impact, as well as diseases which are caused by or result from such injuries, but not diseases which arise merely out of the performance of duty. * * * *

H.R. Rep. No. 1031, 94th Cong., 2d Sess. 4 (1976); H.R. Rep. No. 1032, 94th Cong., 2d Sess. 5 (1976).

The Act contains additional limitations upon entitlement. Among these are a provision that "[n]o benefit shall be paid * * * if the death * * * was caused by

the intentional misconduct of the public safety officer or by such officer's intention to bring about his death." 42 U.S.C. 3796a(1).

2. Petitioner's decedent, William Yanco, was a police officer in Wellesley, Massachusetts, until he died in 1992. Officer Yanco's duties included counseling children and their families. Pet. App. 5a.

In May 1992, the mother of a boy whom Officer Yanco had been counseling accused Officer Yanco of inappropriate sexual behavior with the boy. Pet. App. 5a. Three investigations conducted in June 1992 by local officials cleared Officer Yanco of any misconduct. At the time of his death in late June, Officer Yanco was aware of the results of at least two of those investigations. *Id.* at 6a.

Officer Yanco exhibited symptoms of acute psychological distress during June 1992, presumably as the result of the accusation, the publicity that it received, or both. His wife urged him to seek treatment, but he declined. Pet. App. 6a.

On June 22, 1992, Officer Yanco left work early, telephoned the police station from his home, and, while on the telephone with a supervisor, fatally shot himself. Pet. App. 6a, 22a. Letters he had written to his wife and children that day were later found on his office computer. *Id.* at 6a. Aspects of those letters suggested that he had been considering suicide. *Id.* at 22a.

3. In June 1993, petitioner submitted to the Bureau a claim for a death benefit under the PSOBA. The claim was denied in October 1993. At petitioner's request, in November 1995, a hearing on the denial was conducted, pursuant to 28 C.F.R. 32.24. Pet. 6; Pet. App. 7a. At the hearing, petitioner presented, among other evidence, reports and testimony by a psychiatrist and a psychologist. Pet. App. 24a-25a. These witnesses

concluded that, at the time of his death, Officer Yanco was experiencing post-traumatic stress disorder and depression caused by his police duties. *Id.* at 14a, 23a, 33a.

On December 6, 1995, the hearing officer issued a determination that petitioner was entitled to payment. Pet. 6. The hearing officer concluded that Officer Yanco's mental conditions constituted "personal injuries" under the Act, and that his mental state rendered his suicide unintentional. Pet. App. 7a.

Acting under 28 C.F.R. 32.24(h)(1), the Bureau's Director reversed the hearing officer and denied petitioner's claim in February 1997. The Director found that Officer Yanco's mental conditions did not meet the definition of "traumatic injury" in 28 C.F.R. 32.2(g). The Director further determined that Officer Yanco's suicide did not occur in the line of duty, and that, because the suicide was "carefully thought out and methodically carried through" and therefore intentional, 42 U.S.C. 3796a(1) bars payment of the benefit. Pet. App. 7a, 28a-30a.

4. Petitioner filed a complaint in the Court of Federal Claims challenging the denial.[1] Petitioner argued that the false accusation against Officer Yanco caused a "traumatic injury" within the meaning of the regulation and that this mental injury proximately caused his death. Pet. App. 35a.

The trial court granted summary judgment for the United States. Pet. App. 43a. The court of appeals

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[1] The Court of Federal Claims possesses jurisdiction to hear such challenges under the Tucker Act, 28 U.S.C. 1491 (1994 & Supp. V 1999). *Wydra* v. *Law Enforcement Assistance Admin.*, 722 F.2d 834 (D.C. Cir. 1983); see also *Durco* v. *United States*, 14 Cl. Ct. 424, 426 (1988).

affirmed. *Id.* at 1a-16a. Both courts concluded in relevant part that the Bureau's definition of "personal injury" as excluding non-physical injuries is a permissible construction of the Act, and that substantial evidence supports the Bureau's finding that Officer Yanco committed suicide as the result of mental strain. *Id.* at 10a-14a, 33a-39a, 40a-43a.

ARGUMENT

The decision below is correct and does not conflict with any decision of this Court or any other court of appeals. Further review is thus unwarranted.

1. The court of appeals correctly held that the regulations excluding non-physical injuries from the coverage of the Act are valid and entitled to deference under *Chevron U.S.A Inc.* v. *Natural Resources Defense Council*, 467 U.S. 837, 843-844 (1984). See Pet. App. 11a; see also *id.* at 9a (quoting and applying *United States* v. *Mead Corp.*, 121 S. Ct. 2164 (2001)). Petitioner argues (Pet. 12) that the Bureau's decision is facially ineligible for *Chevron* deference. This is incorrect. The regulations implementing the PSOBA were issued by express authorization of Congress in 42 U.S.C. 3796(a). The Director's decision, in turn, constitutes formal adjudication after a hearing. See 28 C.F.R. 32.24. *Chevron* deference therefore attaches both to the rules and to the Director's statutory and regulatory interpretations. *Mead Corp.*, 121 S. Ct. at 2172-2173; *Christensen* v. *Harris County*, 529 U.S. 576, 587 (2000) (noting that interpretation in agency opinion letter was not "arrived at after, for example, a formal adjudication or notice-and-comment rulemaking" and thus "d[id] not warrant *Chevron*-style deference"); see also *Thomas Jefferson Univ.* v. *Shalala*, 512 U.S. 504, 512 (1994). Indeed, the Director's construction of the

BJA rules defining "personal injury" "must be given controlling weight unless * * * plainly erroneous or inconsistent with the regulation." *Thomas Jefferson Univ.*, 512 U.S. at 512 (internal quotation marks omitted).

2. Petitioner also contends (Pet. 13-14) that the BJA's interpretation of the definition of "personal injury" in 28 C.F.R. 32.2 is contrary to the Act. That argument also lacks merit. Because Congress expressly delegated authority to the Bureau to decide whether an officer has died as the proximate result of a "personal injury" sustained in the line of duty, 42 U.S.C. 3796(a), but did not define "personal injury," see 42 U.S.C. 3796b (definitions), the Bureau must do so. Cf. *United States* v. *Haggar Apparel Co.*, 526 U.S. 380 (1999) (deferring to regulatory elaboration of term in import statute). Petitioner's argument (Pet. 14) that 42 U.S.C. 3796b(4) suggests that Congress intended "personal injury" to include "mental injury" is wholly unfounded. Section 3796b(4) merely defines "intoxication" for purposes of Section 3796a(2), which provides that benefits are not to be paid if the officer died while "voluntarily intoxicated."

Petitioner argues (Pet. 14-16) that *Consolidated Rail Corp.* v. *Gottshall*, 512 U.S. 532 (1994), compels the conclusion that "personal injury" in the PSOBA includes mental injury. This, too, is mistaken. *Consolidated Rail* did not involve an agency interpretation of a statute or any other issue of deference. Instead, it involved a straightforward issue of statutory interpretation in the context of the Federal Employers' Liability Act (FELA). FELA provides a general remedial scheme for recovery in the event of "injury," 45 U.S.C. 51. The PSOBA, in contrast, provides for the recovery of benefits only in the event of "personal injury"

resulting in death or "catastrophic injury" resulting in "permanent and total disability," 42 U.S.C. 3796(a) and (b). Accordingly, there is no reason to think the scope of the term "injury" in FELA would be the same as the scope of "personal injury" in the PSOBA.

Moreover, the text of the Act supports the view that by "personal injury" Congress meant only bodily injury: It is unlikely that Congress contemplated that a mental injury could "direct[ly] and proximate[ly]" cause death as required by the Act. 42 U.S.C. 3796(a). Indeed, the Act specifically provides that no recovery shall be had when death was caused by the deceased "officer's intention to bring about his death." 42 U.S.C. 3796a(1). Consistent with this language, the committee reports emphasize the physical risks posed to public safety officers, but do not mention mental dangers. H.R. Rep. No. 1032, *supra*, at 2-4; S. Rep. No. 816, 94th Cong., 2d Sess. 3 (1976). The text and purposes of the PSOBA are thus quite unlike those of the statute at issue in *Consolidated Rail*.

3. Petitioner asserts (Pet. 16) that the Bureau's construction of "personal injury" may cause the PSOBA to be implemented differently than certain "remedial statutes." Petitioner cites no cases presenting even a potential conflict with the decision below. Moreover, the PSOBA is a special federal statute providing benefits to local law enforcement officers who may be eligible for local death benefits as well. It provides benefits only when officers have been catastrophically injured "in the line of duty" or killed "as the direct and proximate result of a personal injury sustained in the line of duty." 42 U.S.C. 3796(a) and (b). It is not a general workers' compensation or death benefit statute. It is a unique statute, and there is no reason to interpret it in parallel to dissimilar statutes.

4. Petitioner contends (Pet. 17) that the court of appeals wrongly relied on the fact that a number of state workers' compensation statutes currently exclude purely mental injuries from the category of "injury" to conclude that the plain meaning of the term "personal injury" does not necessarily include mental strain. Petitioner further contends (Pet. 18) that, in so holding, the court below misquoted a 1974 Massachusetts Supreme Judicial Court decision. Petitioner's discussion of state law is simply irrelevant. Even assuming that state insurance authorities unanimously considered mental injuries to be "personal injuries" when the PSOBA was passed in 1976 (which petitioner neither asserts nor demonstrates), the meaning ascribed to the term by state statutes and common law would not control here, in light of the valid administrative interpretation of the statute. See, *e.g.*, *United States* v. *Locke*, 471 U.S. 84, 98 (1985). Moreover, the application of the personal injury definition to deny benefits here is buttressed by the Act's express exclusion of benefits when the death was caused by the "officer's intention to bring about his death." 42 U.S.C. 3796a(1). As previously demonstrated, the text and legislative history of the Act provide ample support for the definition of "personal injury" adopted by the Bureau.

5. Finally, petitioner argues (Pet. 19) that the court of appeals erred by citing language in the House and Senate committee reports relevant to the term "personal injury," rather than relying upon the Conference Report. The Conference Report contains no pertinent discussion, however. Furthermore, the definition of "personal injury" set forth in the House reports quoted by the court of appeals (Pet. App. 12a) is relevant. Although the House and Senate conferees substantially adopted the Senate's version of what became 42 U.S.C.

3796(a), see H.R. Conf. Rep. No. 1501, 94th Cong., 2d Sess. 5-7 (1976), the Senate had previously amended its bill on the floor to make it more like the House bill. The Senate floor amendment inserted the word "personal" before "injury" in conformity with the House bill (while deleting from the Senate bill language that would have limited coverage to deaths caused by criminal acts). 122 Cong. Rec. 22,643-22,645 (1976); compare 42 U.S.C. 3796(a) with S. Rep. No. 816, *supra*, at 9. In the floor debate regarding the amendment and the range of injuries to be covered, there was no suggestion that mental injuries were to be included. 122 Cong. Rec. at 22,643-22,645. Therefore, it was appropriate for the Bureau and the court of appeals to seek guidance from the House reports regarding the intended meaning of "personal injury." In any event, in light of the valid administrative interpretation of the statute entitled to *Chevron* deference, any disputes about the relative weights of the conference, House, and Senate reports do not affect the result here. The court below correctly held the interpretation at issue to be entitled to *Chevron* deference.

To the extent that petitioner may suggest that the decision below is in tension with *Harold* v. *United States*, 634 F.2d 547 (Ct. Cl. 1980), petitioner is in essence asserting an intra-circuit conflict that, if it existed, would not justify invoking this Court's jurisdiction. See *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam) ("It is primarily the task of a Court of Appeals to reconcile its internal difficulties."). In fact, in stating that the House Report suggests that the PSOBA may be "'in the nature of'" a workers' compensation act, 634 F.2d at 552 (quoting H.R. Rep. No. 1032, *supra*, at 5-6), the Court of Claims in *Harold* was merely offering an additional or alternative basis

for interpreting the term "line of duty" not to preclude payment of benefits where death was caused by the deceased officer's on-duty gross negligence.[2] That brief passage in the *Harold* decision simply has no bearing on the term "personal injury."

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[2] The statute has since been amended, Pub. L. No. 98-473, Tit. II, § 609F, 98 Stat. 2099, and now expressly precludes payment "if the public safety officer was performing his duties in a grossly negligent manner at the time of his death." 42 U.S.C. 3796a(3).

APPENDIX

1. Section 3224 of Title 28, Code of Federal Regulations provides:

§ 32.24. Request for a hearing.

(a) A claimant may, within thirty (30) days after notification of ineligibility by the Bureau, request the Bureau to reconsider its finding of ineligibility. The Bureau shall provide the claimant the opportunity for an oral hearing which shall be held within 60 days after the request for reconsideration. The claimant may waive the oral hearing and present written evidence to the Bureau within 60 days after the request. The request for hearing shall be made to the Director, Public Safety Officers' Benefits Program, BJA, Washington, DC 20531.

(b) If requested, the oral hearing shall be conducted before a hearing officer authorized by the Bureau to conduct the hearing in any location agreeable to the claimant and the hearing officer.

(c) In conducting the hearing, the hearing officer shall not be bound by common law or statutory rules of evidence, by technical or formal rules of procedure, or by Chapter 5 of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), but must conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose, the hearing officer shall receive such relevant evidence as may be introduced by the claimant and shall, in addition, receive such other evidence as the hearing officer may determine to be necessary or useful in evaluating the claim. Evidence may be presented orally or in the form of written statements and exhibits. The hearing shall be recorded,

and the original of the complete transcript shall be made a part of the claims record.

(d) Pursuant to sections 805, 806 and 1205(a) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3786, 3787 and 3796c, the hearing officer may, whenever necessary:

(1) Issue subpoenas;

(2) Administer oaths;

(3) Examine witnesses; and

(4) Receive evidence at any place in the United States.

(e) If the hearing officer believes that there is relevant and material evidence available which has not been presented at the hearing, the hearing officer may adjourn the hearing and, at any time prior to mailing the decision, reopen the hearing for the receipt of such evidence.

(f) A claimant may withdraw his or her request for a hearing at any time prior to the mailing of the decision by written notice to the hearing officer so stating, or by orally so stating at the hearing. A claimant shall be deemed to have abandoned his or her request for a hearing if he or she fails to appear at the time and place set for the hearing, and does not, within 10 days after the time set for the hearing, show good cause for such failure to appear.

(g) The hearing officer shall, within 30 days after receipt of the last piece of evidence relevant to the proceeding, make a determination of eligibility. The determination shall set forth the findings of fact and conclusions of law supporting the determination. The hearing officer's determination shall be the final agency

decision, except when it is reviewed by the Director under paragraphs (h) or (i) of this section.

(h)(1) The Director may, on his or her own motion, review a determination made by a hearing officer. If the BJA Director decides to review the determination, he or she shall:

(i) Inform the claimant of the hearing officer's determination and the BJA Director's decision to review that determination; and

(ii) Give the claimant 30 days to comment on the record and offer new evidence or argument on the issues in controversy.

(2) The BJA Director, in accordance with the facts found on review, may affirm or reverse the hearing officer's determination. The BJA Director's determination shall set forth the findings of fact and conclusions of law supporting the determination. The BJA Director's determination shall be the final agency decision.

(i)(1) A claimant determined ineligible by a hearing officer under paragraph (g) of this section may, within 30 days after notification of the hearing officer's determination:

(i) Request the BJA Director to review the record and the hearing officer's determination; and

(ii) Comment on the record and offer new evidence or argument on the issues in controversy.

(2) The BJA Director shall make the final agency determination of eligibility within 30 days after expiration of the comment period. The notice of final determination shall set forth the findings of fact and conclusions of law supporting the determination. The BJA

Director's determination shall be the final agency decision.

(j) No payment of any portion of a death or permanent and total disability benefit, except interim death benefits payable under § 32.16, shall be made until all hearings and reviews which may affect that payment have been completed.

2. Section 3796a of Title 42, United States Code provides:

§ 3796a. Limitations on benefits

No benefit shall be paid under this subchapter—

(1) if the death or catastrophic injury was caused by the intentional misconduct of the public safety officer or by such officer's intention to bring about his death or catastrophic injury;

(2) if the public safety officer was voluntarily intoxicated at the time of his death or catastrophic injury;

(3) if the public safety officer was performing his duties in a grossly negligent manner at the time of his death or catastrophic injury;

(4) to any individual who would otherwise be entitled to a benefit under this subchapter if such individual's actions were a substantial contributing factor to the death or catastrophic injury of the public safety officer; or

(5) to any individual employed in a capacity other than a civilian capacity.